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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/454,103 12/03/99 O'CONNELL P SHEL-0101-PU

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EXAMINER

DOUGLAS, S

ART UNIT

PAPER NUMBER

3751

DATE MAILED:

12/06/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/454,103

Applicant(s)
O'Connell

Examiner
Steven O. Douglas

Group Art Unit
3751



☒ Responsive to communication(s) filed on Nov 2, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-25 is/are pending in the application.

Of the above, claim(s) 19-23 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-18, 24, and 25 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3751

DETAILED ACTION

Election/Restriction

1. It is acknowledged applicant did not distinctly and specifically point out the supposed errors in the restriction requirement (see paper # 3), the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1,2,4-7,12,24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Peickert.

The Peickert reference discloses a filler neck comprising a “one-piece seamless funnel member” 16 with a larger inlet (proximate reference numeral 18 in Fig. 2), an “offset” smaller outlet (proximate reference numeral 16 in Fig. 2) and an integral formed tubular element (unlabeled) extending therefrom.

Art Unit: 3751

In regard to claims 6 and 7, the methods of forming (i.e. "drawing" in claim 6 and "braising" in claim 7) the device is not germane to the issue of patentability of the device itself. Therefore, these limitations are not given patentable weight.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-10,12 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitley, II. et al. in view of Peickert.

The Whitley, II. et al. reference discloses a filler neck comprising a funnel member 129 with a barb to accept a plastic tube, but does not disclose the funnel as being seamless. The Peickert reference discloses another filler neck of a seamless construction (as discussed supra). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the funnel member to be seamless in construction as, for example, taught by the Peickert reference device wherein so doing would amount to mere substitution of one functional equivalent type construction for another within the same art and the selection of any of these type constructions would work equally well in the Whitley, II. et al. device.

Art Unit: 3751

In regard to claims 6 and 7, the methods of forming (i.e. "drawing" in claim 6 and "braising" in claim 7) the device is not germane to the issue of patentability of the device itself. Therefore, these limitations are not given patentable weight.

In regard to claims 8,9 and 10, The Whitley reference does not disclose an "adhesive" (claim 8), "resistance weld" (claim 9) or a "weld" (claim 10) type connections between the tubular element and the funnel member. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Whitley, II. et al. device by substituting an "adhesive" (claim 8), "resistance weld" (claim 9) or a "weld" (claim 10) type connection for the barb type connection since the Examiner takes Official Notice that these type connections are all art recognized equivalents in the connecting art and that the selection of any of these known equivalents would work equally well in the Whitley, II. et al. device.

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peickert in view of Bates et al.

The Peickert reference discloses a filler neck, but does not disclose an "anti-corrosive coating". The Bates et al. reference discloses another filler neck that has an anti-corrosive coating to prevent the metal part from rust (see col. 5, lines 25-39). Therefore, it would have been obvious to provide an "anti-corrosive coating" in view of the teachings of the Bates et al. reference to prevent the metal part from rust (see col. 5, lines 25-39).

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whitley, II. et al. in view of Peickert as applied to claim 1 above, and further in view of Bates et al.

Art Unit: 3751

The Whitley, II. et al. reference discloses a filler neck, but does not disclose an "anti-corrosive coating". The Bates et al. reference discloses another filler neck that has an anti-corrosive coating to prevent the metal part from rust (see col. 5, lines 25-39). Therefore, it would have been obvious to provide an "anti-corrosive coating" in view of the teachings of the Bates et al. reference to prevent the metal part from rust (see col. 5, lines 25-39).

8. Claims 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peickert.

The Peickert reference discloses a filler neck (as discussed supra), but does not disclose a "junction plane as being between 60 and 85 degrees" (claim 13), " $.1D_2$ is less than $.3D_2$ and D_1 is at least $1 \frac{1}{2}D_2$ " (claim 14), D_1 is at least $1 \frac{1}{2}$ times D_2 (claim 16), or D_2 is less than 35 mm and 30mm" (claim 18). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the filler neck such that the "junction plane is being between 60 and 85 degrees" (claim 13), " $.1D_2$ is less than $.3D_2$ and D_1 is at least $1 \frac{1}{2}D_2$ " (claim 14), D_1 is at least $1 \frac{1}{2}$ times D_2 (claim 16), or D_2 is less than 35 mm and 30mm" (claim 18), since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Response to Arguments

9. Applicant's arguments filed 11/2/2000 have been fully considered but they are not persuasive. In regard to Applicant's argument that the Peickert reference fails to disclose a

Art Unit: 3751

“one-piece seamless funnel member” with an inlet and outlet arranged in an “off-set axial relation”, Examiner has inspected Figure 2 of Peickert and fails to see how the funnel member can not be construed as being one-piece and seamless. Furthermore, Applicant has admitted that the axial relationship of the inlet and outlet of Peickert are “skewed” (see page 3, lines 1 and 2 of arguments). Hence, the Peickert reference can be construed as being axially offset at a skewed angle.


Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 3751

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven O. Douglas whose telephone number is (703) 308-0891.



STEVEN O. DOUGLAS
PRIMARY EXAMINER

SD

December 5, 2000